

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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In re:

PROMESA
Title III

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

No. 17 BK 3283-LTS

THE COMMONWEALTH OF PUERTO RICO
et al.,

(Jointly Administered)

Debtors.¹
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ORDER REGARDING NOTICE OF CONSTITUTIONAL CHALLENGE TO A STATUTE

The Court has received and reviewed the *Notice of Constitutional Challenge to a Statute* (Docket Entry No. 18486 in Case No. 17-3283, the “Notice”), filed by PFZ Properties, Inc. (“PFZ”), providing notice that its *Objection to “Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.” by Creditor PFZ Properties, Inc.* (Docket Entry No. 18418 in Case No. 17-3283, the “Objection”)² “questions the constitutionality of [the Puerto Rico Oversight, Management, Economic Stability Act (‘PROMESA’)], 48 U.S.C. § 2101 et seq., a federal statute,” together with the Bankruptcy Code, on the basis that it violates the Fifth Amendment to the Constitution of the United States by allowing for the taking of PFZ’s property without just compensation. (Notice ¶ 1. See also Obj. at 2, 6 n.8, 13 (“[T]he provisions of the Bankruptcy Code on which the Plan relies for the treatment of PFZ’s claim, made

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (“Commonwealth”) (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² The Objection was filed in response to the Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al. (Docket Entry No. 17627 in Case No. 17-3283, the “Plan”), filed by the Financial Oversight and Management Board for Puerto Rico on behalf of the indicated debtors.

applicable to this case by PROMESA, are unconstitutional, as applied to that claim, because they are contrary to the Takings Clause of the Fifth Amendment.”.)

Where “[a] party [] files a pleading, written motion, or other paper drawing into question the constitutionality of a federal . . . statute,” the Federal Rules of Civil Procedure mandate that the Court certify the constitutional challenge to the Attorney General. Fed. R. Civ. P. 5.1.³

It is hereby ORDERED that PFZ’s challenge to the constitutionality of PROMESA, on the grounds that the provisions of the Bankruptcy Code made applicable to these proceedings by PROMESA, and upon which provisions the Plan purports to treat PFZ’s claim, violates the Takings Clause of the Fifth Amendment to the Constitution of the United States, is certified to the Attorney General of the United States; and it is further

ORDERED that the Clerk of this Court shall forward a copy of this Order, the Plan (Docket Entry No. 17627 in Case No. 17-3283), and PFZ’s Objection (Docket Entry No. 18418 in Case No. 17-3283) to the Attorney General of the United States.

SO ORDERED.

Dated: October 13, 2021

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge

³ Rule 5.1 of the Federal Rules of Civil Procedure is made applicable to this proceeding by rule 9005.1 of the Federal Rules of Bankruptcy Procedure, as incorporate by section 310 of PROMESA. 48 U.S.C. § 2170.